55418-2

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NO. 55418-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM F. JENSEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RICHARD A. JONES

BRIEF OF RESPONDENT

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A. ISSUES

1. A defendant claiming prosecutorial misconduct based upon a statement made in closing argument must show that the statement was improper and that there was a substantial likelihood that the misconduct affected the verdict. During a lengthy closing argument, the prosecutor made a brief comment disapproving certain actions of defense counsel. The trial court sustained defense counsel's objections. Defense counsel did not ask for a curative instruction nor request a mistrial. Has the defendant failed to show that there is a substantial likelihood that the comment affected the verdict?

2. When a defendant is convicted of multiple serious violent offenses based upon separate and distinct criminal conduct, the sentencing court is required to impose consecutive sentences. Jensen was found guilty of four counts of solicitation to commit murder in the first degree, with four separate victims. Did the trial court properly impose consecutive sentences?

3. A defendant's Sixth Amendment right to counsel attaches when formal charges have been filed as part of a judicial proceeding. While Jensen was in custody on another charge, he told an undercover officer about his plot to kill his family. Jensen

was not charged with conspiracy to commit murder at the time of the conversation with the officer. Does Jensen's claimed violation of his Sixth Amendment right to counsel fail?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On July 29, 2003, the defendant, William Jensen, was charged by information with four counts of solicitation to commit murder in the first degree. CP 1-9. Jensen was arrested on the warrant on the same day.[1] Supp. CP__ (Sub. No. 4).

The matter was sent to trial before the Honorable Richard Jones. A jury found Jensen guilty as charged on all four counts of solicitation to commit murder. CP 84-87. Jensen was sentenced to 180 months on each of the four counts, to run consecutive to one another for a total of 720 months in custody. CP 129-36. Jensen filed this timely appeal. CP 127-28.

[1] At the time of his arrest on the solicitation to commit murder charges, Jensen was being held in the King County Jail on a domestic violence charge with his wife, Sue Jensen, named as the victim. 11RP 61.

2. SUBSTANTIVE FACTS

Jensen is a former King County Sheriff's Deputy. 13RP[2] 64-69. Jensen married Sue Jensen[3] in 1979, and together they have two children, Jenny Jensen (nineteen years old) and S.J. (fifteen years old). 9RP 107-08. Sue has a sister named Linda Harms. 9RP 109.

In 2001, Sue filed for divorce from Jensen. 9RP 111. During the divorce proceedings a deposition was conducted. 9RP 62-63, 117. During this deposition, the defendant made a slashing motion across his throat and mouthed the words "you're dead." 9RP 62-63, 81. He directed both his words and his actions toward Sue. 9RP 81. Later, in a telephone conversation between Sue and Jensen, he told her that "if I am going to jail you are going to your grave." 9RP 119. Sue called her divorce attorney and called the police. 9RP 119.

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[2] The verbatim record of proceedings is designated as follows:
1RP (April 7 and May 11, 2004); 2RP (April 22, 2004); 3RP (April 29, 2004); 4RP (May 17, 2004); 5RP (May 18, 2004); 6RP (May 19, 2004); 7RP (May 20, 2004); 8RP (May 21, 2004); 9RP (May 24, 2004); 10RP (May 25, 2004); 11RP (May 26, 2004); 12RP (June 1, 2004); 13RP (June 2, 2004); 14RP (June 3, 2004); 15RP (June 4, 2004); 16RP (December 1, 2004); 17RP (December 10, 2004).

[3] Because the defendant shares the same last name as several of his victims, the State will reference victims by their first names.

These acts formed the basis for harassment and domestic violence related charges brought against Jensen, with Sue as a named victim. 4RP 61, 102; 5RP 9. On June 3, 2003, Jensen was held in the King County Jail on these charges. 4RP 95, 102; 5RP 9; 11RP 61. That matter was scheduled for a pre-trial hearing on June 28, 2003, and scheduled for trial on August 4, 2003. 11RP 61. Sue was scheduled to be present in court for both the pre-trial hearing and trial. 11RP 61.

While in custody on the harassment and domestic violence related charges during the month of June 2003, Jensen was housed on the eleventh floor of the King County Jail. 9RP 147. While in the jail he made friends with a man named Greg Carpenter. 9RP 147. Carpenter and Jensen struck up a conversation and Jensen complained to Carpenter about his "financial problems" and his wife. 9RP 149. Over a period of days, the conversation eventually turned to how Carpenter could assist Jensen in solving his problems. 9RP 150-51. Jensen initially told Carpenter that he wanted his wife "sniped," meaning shot and killed. 9RP 150-51. Carpenter informed Jensen that was not the way to go, and that he would be better off making it look like an accident. 9RP 150-53. When Carpenter told Jensen he could

make the killings look like an accident, Jensen was "tickled pink." 9RP 153. Jensen extended the group of family members he wanted killed, and offered to pay Carpenter $150,000 if he would kill Sue Jensen, Linda Harms and Jenny Jensen. 9RP 150-52. Jensen next wrote out a note in which he provided Carpenter with details about his family, such as physical descriptions, location of houses, and cars. 9RP 155.

Jensen agreed to pay Carpenter $2,500 in front money. 9RP 158. The front money would be given to Carpenter by Jensen's sister. 9RP 158. Carpenter was released from custody and met, as arranged, with Jensen's sister who gave him an envelope with $2,500. 10RP 6.

Carpenter contacted Seattle Police Detective Cloyd Steiger. 10RP 22. Carpenter had worked with Detective Steiger in the past, providing information to him regarding criminal activities. 10RP 126. On July 23, 2003, Carpenter met with Detective Steiger and provided him detailed information about Jensen's plot to kill his family. 10RP 130. Detective Steiger contacted Sue Jensen to inform her of Jensen's plot to kill Sue, Jenny and Linda Harms, and verified the information Carpenter provided to him. 10RP 137-38.

Detective Steiger asked fellow detective Sharon Stevens to help him in investigating Jensen's plot to kill his family. 10RP 139. Detective Stevens went undercover and posed as "Lisa," an associate of Carpenter. 10RP 139. On July 24, 2003, Detective Stevens went to the King County Jail and, posing as Lisa, talked with Jensen in the visitor's section of the jail. 11RP 79-81. Detective Stevens introduced herself as "Lisa" and showed Jensen a letter written by Carpenter outlining aspects of the plot to kill Jensen's family. 11RP 82-89. Jensen informed Detective Stevens that Carpenter should carry out the plot to kill the family. 11RP 89-95.

On June 26, 2003, Detective Stevens, once again posing as Lisa, returned to the jail and spoke with Jensen a second time. 11RP 98. This time the conversation was recorded by a recording device that had been set up in the jail visiting booth. 11RP 98-99. Detective Stevens showed Jensen another letter written by Carpenter. 11RP 103-04. Stevens and Jensen had an extended conversation about the plot to kill his family, and in that conversation Jensen told Stevens that his son S.J. should also be killed. 11RP 114-15. This conversation was recorded. Ex. 16; Ex. 23.

On July 29, 2003 Jensen was charged with four counts of Solicitation to Commit Murder in the First Degree. CP 1-9.

Jensen testified at trial. 13RP 64-206; 14RP 33-45. He testified that while in the jail he was conducting a "reverse sting" in which he was using his family as "bait" to set up Carpenter. 13RP 92-93, 194.

C. ARGUMENT

1. JENSEN CANNOT DEMONSTRATE THAT ANY MISCONDUCT WARRANTS REVERSAL

Jensen contends that a brief comment by the prosecutor in closing argument was improper, but he cannot show any resulting prejudice. The brief comment by the prosecutor must be viewed in the context of a lengthy closing argument, including favorable remarks about defense counsel that were made during rebuttal closing. When viewed in context, the prosecutor's argument was not so prejudicial as to warrant reversal.

a. Relevant Facts

Jensen takes exception to a brief comment made during the prosecutor's lengthy closing argument. 14RP 136-45; 15RP 2-25.

> Prosecutor: What I next want to talk to you about is the law that you're to apply in this case. That law was

provided to you by the Court. Something I want to be clear about in this case.

Mr. Jensen is charged with the crime of Solicitation to Commit Murder in the First Degree. He's not charged with attempted murder. And he's not charged with murder. I have to go back to jury selection when I had to repeatedly object to the way that counsel was misleading you about what the law was. I objected several times. The Court sustained those objections. The good news is at this point you're now provided with the law and you can see the extent to which the defense was attempting to mislead you by the series of questions --

Defense counsel: Your Honor, that's improper argument and I object.

Court: Sustained, counsel.

Prosecutor: You have to ask yourself why are they attempting to mislead us --

Defense counsel: Objection, improper.

Court: Sustained.

Prosecutor: -- throughout this case. There's been a suggestion by the defense that there had to be a substantial step taken after the solicitation occurred. There's also been a suggestion that the person who was solicited, the person who was accepting the money had to also have the intent to carry through with the murder and there was a series of questions asked during jury selection that related to that.

What you see by the law that is directly contrary, that the definition of criminal solicitation is straightforward.....

15RP 12-13. At no point did Jensen seek a mistrial, or request a curative instruction based upon the prosecutor's comment. 15RP 12-78.

In rebuttal the prosecutor[4] highlighted the important role of defense counsel, stating: "They perform a valuable service in making sure that every defendant gets a fair trial." 15RP 65. The prosecutor went on to state: "We thank you and I thank you on behalf of defense counsel too. As I alluded to, his role is an important one in this case." 15RP 77.

b. The prosecutor's brief comment does not warrant reversal

In a claim of prosecutorial misconduct in closing argument, the argument by the prosecutor must be reviewed in "the context of the total argument, the issues in the case, the evidence addressed in the argument, and the instructions given to the jury." State v. French, 101 Wn. App. 380, 385, 4 P.3d 857 (2000). The mere fact that an improper comment was made does not require reversal. State v. Russell, 125 Wn.2d 24, 86, 882 P.2d 747 (1994). The defendant has the burden of establishing that the prosecutor's

[4] Prosecutor Snow gave the initial closing statement. Prosecutor Brenneman gave rebuttal closing.

conduct was improper, and the prejudicial effect of the conduct. State v. Brett, 126 Wn.2d 136, 175, 892 P.2d 29 (1995). Prosecutorial misconduct does not constitute prejudicial error unless the appellate court determines there is a substantial likelihood that the misconduct affected the jury's verdict. State v. Evans, 96 Wn.2d 1, 5, 633 P.2d 83 (1981). In determining the likelihood that an improper comment affected the verdict, a reviewing court will consider whether a limiting instruction or mistrial was requested, the effect of the instructions given, the overall strength of the prosecutor's case, the nature of the improper comment, and whether the remark was of an isolated nature. State v. Negrete, 72 Wn. App. 62, 67, 863 P.2d 137 (1993).

The prosecutor's remarks that Jensen now challenges must be considered in light of the entire closing argument. French, 101 Wn. App. at 385. The prosecutor's closing argument was lengthy and largely focused on the testimony about the undercover operation, the reliability of Carpenter's testimony, and the absurdity of Jensen's claim that he was conducting a "reverse sting" operation, as proof of the crimes charged. 14RP 136-46; 15RP 2-25. The prosecutor made only a brief comment about defense

counsel, which was offset by the favorable comments about defense counsel made during rebuttal. 15RP 65, 77.

When viewed in context, the challenged remarks appear to be an inartful attempt to clarify the law on solicitation. The prosecutor did not return to this argument in rebuttal argument, which was also lengthy. In fact, in rebuttal the prosecutor stated that defense attorneys "perform a valuable service in making sure that every defendant gets a fair trial," and she further commented that the role of a defense attorney is "an important one." 15RP 65, 77. In sum, the comment that Jensen takes exception to was brief. Any possible prejudice was mitigated by the fact that the objection was sustained, and in rebuttal the prosecutor commented on the important role of the defense attorney in the criminal justice system.

Furthermore, immediately after the prosecutor's comment, the court sustained defense counsel's objections. The prosecutor went on to argue instructions of law related to criminal solicitation. Apparently, even trial counsel felt this was sufficient. State v. Swan, 114 Wn.2d 613, 661, 790 P.2d 610 (1990), cert. denied, 498 U.S. 1046 (1991) (failure to request a mistrial or further instruction strongly suggests trial counsel felt the remedy was sufficient); French, 101 Wn. App. at 387. When viewed in the context of a

lengthy closing argument and follow-up comments highlighting the important role of defense counsel, the prosecutor's comments were not so prejudicial as to require reversal.

Jensen's reliance upon State v. Gonzales, 111 Wn. App. 276, 282-84, 45 P.3d 205 (2002), is misplaced. In Gonzales the prosecutor "sought to 'draw a cloak of righteousness' around the State's position" and stated: "I have a very different job than the defense attorney. I do not have a client, and I do not have a responsibility to convict. I have an oath and an obligation to see that justice is served." Id. at 282-83. The defense objected, and the objection was overruled by the court. Id. at 283. The prosecutor went on to argue, that "the defense has an obligation to a client." Id. Defense counsel again objected, and the court overruled the objection a second time. The court stated, "Counsel, that objection is not well taken. It's overruled." Id. at 283. The prosecutor continued, stating that the defense attorney "has a client to represent, I don't. Justice, that's my responsibility and justice is holding him responsible for the crime he committed." Id.

This Court found that the prosecutor's argument was improper, and that the improper argument was compounded by the court not sustaining the objections made by defense counsel. The

court's failure to sustain the objection gave "additional credence to the argument." Id. at 284. Based upon these circumstances this Court found that the argument had the potential to affect the verdict.

Jensen's case is distinguishable. The trial court sustained both objections lodged by counsel to the prosecutor's argument. 15RP 12-23. Moreover, the prosecutor's argument was given less credence by the mere fact that the trial judge promptly sustained the objections and the prosecutor promptly moved on to a different argument.

Jensen also cites Bruno v. Rushen, 721 F.2d 1193 (9th Cir. 1983), but that case too is distinguishable. In Bruno, the prosecutor weaved a theme in both opening and closing statements that strongly suggested that defense counsel had encouraged a key witness to recant or change her testimony that once had favored the State's theory of the case. In the prosecutor's closing statement, the prosecutor "labeled defense counsel's actions as unethical and perhaps even illegal without producing one shred of evidence" to support the accusation. Id. at 1194. Moreover, the prosecutor suggested to the jury that the fact that the defendant had hired a lawyer to represent him was probative of the

defendant's guilt. The prosecutor labeled this a "Judas syndrome" wherein "the defense is the Judas in this case, and they have betrayed that system and there are thirty pieces of silver, or the $12,000 given over by the defendant to his counsel." Id. at 1194. It was on these facts that the court found that the comments were not harmless beyond a reasonable doubt and were a comment on Bruno's right to counsel.[5] Id.

The brief comment made by the prosecutor in this case does not rise to the level of those made by the prosecutor in Bruno. In Bruno the prosecutor called the defense counsel Judas and directly commented upon the defendant's right to counsel. Here, the prosecutor made a brief comment about the defense attorney's remarks in jury selection. The court twice sustained defense counsel's objections and the prosecutor moved on. In rebuttal argument the prosecutor twice favorably highlighted the important role of a defense attorney in a criminal trial.

Jensen's reliance upon United States v. Friedman, 909 F.2d 705 (2nd Cir. 1990) is also misplaced. In Friedman, the prosecutor

[5] Jensen argues that this Court should apply a harmless beyond a reasonable doubt standard. But a prosecutor's remark that merely touches on a constitutional right, can still be cured by a proper instruction. See, State v. Klok, 99 Wn. App. 81, 84, 992 P.2d 1039 (2000).

repeatedly made inappropriate argument about the role of the defense attorney, comments that were given more credence when the trial court overruled one of the objections. For example, the prosecutor lodged repeated attacks against defense counsel as "an unsworn witness" throughout his closing argument, and argued that defense counsel was just defending a drug dealer and trying "to get them off, perhaps even for high fees." Id. at 707-08. The prosecutor went on to argue that the defense attorney would make "any argument he can to get that guy off." Id. at 708. Defense counsel objected and this objection was overruled. Id. The Second Circuit found that the trial court's response to objections made by defense counsel to these arguments was not sufficient. Based upon these facts the court reversed the conviction and remanded for a new trial. Id. at 710.

In contrast, here the comment by the prosecutor was brief, and the objections to the argument were sustained by the trial court. In summary, the prosecutor's inartful comment did not constitute misconduct and does not warrant reversal.

2. THE TRIAL COURT DID NOT ERR WHEN IT IMPOSED CONSECUTIVE SENTENCES ON FOUR SERIOUS VIOLENT OFFENSES

Jensen argues that the trial court erred when it imposed consecutive sentences on each of the four counts of solicitation to commit murder in the first degree, and argues that this sentence violates Blakely and Apprendi.[6] Jensen is mistaken. The Washington Supreme Court recently held that a trial court's imposition of consecutive sentences on serious violent offenses is proper. Here, each count named a separate victim, and therefore constituted separate and distinct conduct that required the imposition of consecutive sentences. Jensen's argument should be rejected.

When a defendant is convicted of two or more "serious violent offenses" that arise from "separate and distinct criminal conduct," sentencing courts are required to impose consecutive sentences. RCW 9.94A.589(1)(b). Solicitation to commit murder in the first degree is a serious violent offense. RCW 9A.32.030; RCW 9A.28.030. Well settled caselaw establishes that when multiple offenses do not constitute "same criminal conduct," they

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[6] Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

are necessarily separate and distinct. State v. Cubias, 155 Wn.2d 549, 552, 120 P.3d 929 (2005). "Same criminal conduct" is defined as "two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." RCW 9.94A.589(1)(a). Washington courts have held that offenses are "separate and distinct criminal conduct" when separate victims are involved. Cubias, 155 Wn.2d at 552-53.

In Cubias, the Washington Supreme Court rejected the very argument made by Jensen. 155 Wn.2d at 551. In Cubias, the jury found the defendant guilty of three counts of attempted first degree murder for shooting at, or injuring, three different victims. Id. at 551. The trial court found that because there were three separate victims, the offenses necessarily arose from separate and distinct criminal conduct. Accordingly, the court imposed consecutive sentences on all counts. Id. Cubias, like Jensen, argued that the imposition of consecutive sentences was unconstitutional in light of Blakely and Apprendi. The court rejected that argument, and held that the principle set forth in Blakely and Apprendi did not apply to imposition of consecutive sentences based upon separate offenses. Id. at 551.

Here, Jensen was convicted of four counts of solicitation to commit murder in the first degree. Each count involved a separate victim: Sue Jensen, Jenny Jensen, S.J., and Linda Harms. CP 1-9, 84-87. The crime of solicitation to commit murder in the first degree is a serious violent offense. The holding of Cubias controls, and Jensen's argument should be rejected.

Jensen also argues that because the trial judge did not make an express finding that the offenses were based on separate and distinct criminal conduct, the imposition of consecutive sentences was improper. Jensen cites RCW 9.94A.589 (1)(b) as requiring the court to make an express finding of "separate and distinct" criminal conduct at the time of sentencing.[7] The statute does not require that such an express finding be made. In any event, the verdicts of the jury themselves prove that four separate victims were involved; thus, the crimes were based on separate and distinct criminal

[7] "Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection."

conduct. CP 1-9, 84-87. Accordingly, this argument should also be rejected

3. JENSEN'S RIGHT TO COUNSEL HAD NOT ATTACHED WHEN HE SPOKE TO AN UNDERCOVER OFFICER ABOUT THE MURDERS

Jensen asserts that his Sixth Amendment right to counsel had attached at the time he spoke with an undercover officer about his plot to murder his own family. Jensen failed to argue this issue at the trial court. He nevertheless asks this court to review the issue on the grounds that it is manifest constitutional error and may be asserted for the first time on appeal pursuant to RAP 2.5(a)(3). In any event, Jensen's argument fails based upon well settled caselaw. Jensen was in custody on another criminal charge at the time he communicated his desire to have his family murdered. As Jensen had not been formally charged with solicitation to commit murder, his right to counsel had not attached on the charges at issue in this appeal. Jensen's arguments to the contrary should be rejected.

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense." U.S. Const. Amend. 6. Specifically, the

Sixth Amendment right to counsel entitles the accused to counsel "at or after the time that judicial proceedings have been initiated against him --'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.' " State v. Stewart, 113 Wn.2d 462, 780 P.2d 844 (1989)(citing Brewer v. Williams, 430 U.S. 387, 398, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977)). A Sixth Amendment right to counsel attaches when formal charges have been filed as part of a judicial proceeding against a defendant, and only as to those charges. Stewart, 113 Wn.2d at 473-74.

In State v. Stewart, the defendant was arrested and charged with robbery, and counsel was appointed. Detectives contacted the defendant in jail and interviewed him on an unrelated burglary investigation. Id. at 463-64. During the interview the defendant confessed to the burglaries, and during his trial on the burglary charges his confession was offered against him. On appeal the defendant argued that his Sixth Amendment right to counsel had been violated when detectives interviewed him on the burglaries, while he was in custody on the robbery charge. The court rejected his claim and held that the defendant's right to counsel had not

attached on the burglary investigation because charges had not been filed.[8] Id. at 473-74, 478.

Stewart is directly on point. When Detective Stevens, in her undercover capacity, contacted Jensen in the jail, he was in custody on a domestic violence charge. 11RP 61. Jensen's Sixth Amendment right to counsel had not attached at the time Stevens spoke with him in the jail because formal judicial proceedings on the solicitation to commit murder charges had not yet been initiated. This court should find, as was the case in Stewart, that Jensen's right to counsel had not attached, and that his statements to the undercover officer were properly admitted.

In support of his argument, Jensen relies upon Maine v. Moulton, 474 U.S. 159, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985). But Moulton is distinguishable. In that case, after the defendant had been charged with a crime, the government electronically wired his co-defendant to operate as an informant to record the defendant's statements. The Court in Moulton focused its ruling on the origin of the Sixth Amendment right to counsel, and held that

[8] The United States Supreme Court in Texas v. Cobb reiterated that the Sixth Amendment right to counsel attaches only to charged offenses and is "offense specific." 532 U.S. 162, 172-73, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001). The Court clarified that the right does not extend to uncharged offenses even though factually related to the charged offense. Id.

statements made by the defendant relating to the pending charge were inadmissible. However, the Court made an important distinction, observing that the statements made by a defendant that incriminated him in new crimes, *uncharged at the time of the statements,* did not violate the Sixth Amendment right to counsel. The Court noted:

> [T]o exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public's interest in the investigation of criminal activities.

Id. at 180. In a footnote, the Court continued, "[i]ncriminating statements pertaining to other crimes, as to which the Sixth Amendment right has not yet attached, are, of course, admissible at a trial of those offenses." Id. at 180 n.16.

Under the facts presently before this court, Jensen's statements made to Detective Stevens were admissible because his Sixth Amendment right as to potential solicitation charges had not yet attached. As the Moulton court noted, to hold otherwise would "unnecessarily frustrate the public's interest in the investigation of criminal activities." Id. at 180.

This Court should find that Jensen's right to counsel on the solicitation to commit murder charges had not attached when Detective Stevens spoke with him in the jail. Accordingly, Jensen's argument that his Sixth Amendment right to counsel was violated should be rejected.

D. CONCLUSION

For the foregoing reasons, Jensen's argument that the prosecutor committed misconduct should be rejected. This Court should also find that the trial court properly imposed consecutive sentences on the four serious violent offenses. Finally, this Court should find that Jensen's right to counsel on these charges had not attached and that his statements to the undercover officer were properly admitted.

DATED this 24 day of April, 2006.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. WILLIAM JENSEN, Cause No. 55418-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Name Bora Ly
Done in Seattle, Washington

Date April 24, 2006